

MINING CLAIM—DEPOSITS OF ONYX—APPROPRIATION AS LODES.

UTAH ONYX DEVELOPMENT COMPANY.

Valuable deposits of onyx in well-defined fissures in rock in place are subject to appropriation under the lode mining laws.

*First Assistant Secretary Pierce to the Commissioner of the General*  
(E. C. F.)                      *Land Office, March 24, 1910.*                      (F. P.)

The Utah Onyx Development Company has appealed from your decision of November 23, 1909, holding for cancellation its mineral entry to the Lea Onyx lode claim, situate in the Salt Lake City land district, in which you hold that said claim is not patentable under the lode mining law.

The record, which is supported upon appeal by a report and statement of James E. Talmage, an eminent geologist and mining expert, shows that the valuable deposit in this claim is onyx, and that the onyx occupies a well-defined fissure with clearly marked hanging and foot walls of limestone, and that the vein of onyx has a well-defined strike and dip. The entire fissure is filled with

onyx of high commercial value. The case is in all essential respects similar to the case of *Webb v. American Asphaltum Mining Company* (157 Fed. Rep., 203), in which the court says that the words "other valuable deposits," in section 2320 of the Revised Statutes, taken in their common signification, include gilsonite and the other solid forms of asphaltum, for these are valuable mineral deposits, and that:

The test which Congress provided by this legislation to be applied to determine how these deposits should be secured was the form and character of the deposits. If they are in veins or lodes in rock in place, they may be located and purchased under this legislation by means of lode mining claims; if they are not in fissures in rock in place but are loose or scattered on or through the land they may be located and bought by the use of placer mining claims.

The Department is disposed to follow this case. Therefore, your decision is reversed, and patent will issue if there are no other objections.

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